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09/804,403	03/12/2001	Aaron Strand	8362-DIV	1089

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EXAMINER

MADSEN, ROBERT A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/804,403

Applicant(s)

STRAND ET AL.

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,6-9,14,16,18,19,75-77,82-86,104 and 107-147 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-9,14,16,18,19,75-77,82-86,104 and 107-147 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 24, 2005 has been entered. Claims 21,23,41,42,46-49 , 54, 56,58,59, and 61 have been cancelled. Claims 1,2,6-9,14,16,18,19,75-77,79,82-86,93,104,107-147 remain pending.

### ***Claim Objections***

2. Claims 113-121 objected to because of the following informalities: they depend from canceled claims 21,41 and 61. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 142 and 143 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 1761

5. Claims 142 and 143 recite the limitation "said slider". There is insufficient antecedent basis for this limitation in the claim. For examination purposes, it will be understood that a slider is associated with the fasteners.

6. Claim 142 recites "opposite ends" of the fastener tracks are "sealed together" it is unclear which end (vertical or horizontal).

***Claim Rejections - 35 USC § 102***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1,2,6-9, 14,18,19,110,122 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Herber et al. (US 5525363).

9. See the embodiments of Figures 18,19, and 19a, which include a single web sheet of multilaminate material 204 with fold 232 (note the walls of the pouch are multilaminate in Column 5, lines 48-90), line of perforation 254 on either side of the fold (Column 2, lines 25-39, Column 10, lines 47-67) an opening 226, a reclosable fastener structure comprising fasteners 218/220 each having a skirt structure including distal portions attached to the web (e.g. the portion of the fastener structure skirt 214/216 below the fastener attached to the items 226/238) located between the line of weakness and the opening at 266 , and the pouch contains cheese (See Abstract). Also see Column 2, line 47 to Column 3, line 47, Column 5, lines 3-60 Column 8, line 28 to Column 9, line 57). With respect to claims 1 and 2 in particular, the reclosable fastener *structure* at least in part extends past the line of perforations into the fold (e.g. flange

Art Unit: 1761

items 214 and 216), since the reclosable fastener structure is recited and thus understood to be comprising the entire fasteners and an integral skirt.

***Claim Rejections - 35 USC § 103***

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claim 1,2,6-9,14,18,19,75,79,82-86,104,107-112,122-130,132,134-137,142-147 is rejected under 35 U.S.C. 103(a) as being unpatentable over Belmont et al. (US 6327754 B1) in view of Stolmeier et al. (US 6257763B1).

12. Belmont et al. teach a cheese bag made of a single multilaminate web sheet of predetermined dimensions with a fold structure (item 52 of Figure 3C) into which two releasably engageable fastener tracks with a slider (items 26 and 32 of Figure 3C) extend, the tracks include integral skirt structures with distal margins (e.g. items 28 and 34 of Figure 3C) that are attached to the web, the bag is filled through an opening (item 74 of Figure 3C) at the distal end of the web material, and sealed. (Note embodiment of Figure 3C in light of Column 1, lines 20-55, Column 5, line 25 to Column 6, line 20) Belmont et al. teaches a tamper evident seal may be provided by either sealing a bag end around the fastener such that the fastener extend into the sealed end or providing a line of weakness between skirt structures of the fastener tracks so that the ends are sealed together (See the discussion of the embodiment of Figure 3b in Column 5, lines 44-49 in light of Figure 3c) However, Belmont et al. are silent in teaching a line of weakness on either side of the fold such that the fastener extends above the line of

Art Unit: 1761

weakness into the fold structure of the multilaminate film and the fastener extends about the line of weakness after removal of the fold section (i.e. a tear off section) above the line of weakness.

13. Stolmeier et al. , like Belmont et al. , also teach providing tamper evidence structures for a bag with fasteners by either using a line of weakness between skirt structures of the fastener tracks or via a fold of web material over the fastener such that fastener extend into the fold. However, in the case of the tamper evident fold material Stolmeier et al. further provide lines of weakness (i.e. perforations in a predetermined pattern) on either side of the fold and between the skirt portion and fold, such that the fastener extends above and parallel to the line of weakness into the fold structure, for the purpose of facilitating the removal of the tamper evident material, which would result in and the fastener extends above the lines of weakness after removal of the fold (Column 1, lines 25-57, Column 3, line 30 to Column 4, line 10, Figures 8 and 7b/c).

14. Therefore it would have been obvious to modify the embodiment of Belmont et al. providing a tamper evident fold about the fasteners (e.g. embodiment 3c) and provide lines of weakness (i.e. perforations of a predetermined pattern) or tear path through at least one layer of the multilaminate film on either side of the fold and between the skirt portion and fold, such that the fastener extends above and parallel to the line of weakness into the fold, which would result in and the fastener extends above the lines of weakness after removal of the fold tear-off section, since Stolmeier teaches providing the lines of weakness in a tamper evident fold structure surrounding the fastener of the bag for the purpose of facilitating the removal of the tamper evident fold structure.

Art Unit: 1761

15. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herber et al. (US 5525363) as applied to claims 1,2,6-9, 14,18,19,110,122, further in view of Hayashi et al. (US 6074097).

16. Herber et al. teach a linear area of weakness comprising perforations, but is silent in teaching scoring. Hayashi et al also teach reclosable food bags with an area of weakness (Column 20, lines 10-26). Hayashi is relied on as evidence of the conventionality of providing either perforations or scoring (i.e. grooves), as recited in claim 56(Column 18, lines 31-40, Figure 10). Therefore, once it was known to include an area of weakness in combination with a reclosable bag, to select any particular type of weakness such as perforations or scoring, would have been an obvious design choice since Hayashi et al. teach either perforations or scoring are possible and one would have been substituting one conventional area of weakness for another for the same purpose.

17. Claims 16,93, 131, 138,139,141 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belmont et al. (US 6327754 B1) in view of Stolmeier et al. (US 6257763B1) as applied to claims 1,2,6-9,14,18,19,75,79,82-86,104,107-112,122-130,132,134-137,142-147 further in view of Hayashi et al. (US 6074097).

18. Regarding claims 16,93, and 139, modified Belmont et al. are silent in teaching scoring. Hayashi et al also teach reclosable food bags with an area of weakness (Column 20, lines 10-26). Hayashi is relied on as evidence of the conventionality of providing either perforations or scoring (i.e. grooves), as recited in claim 56(Column 18,

Art Unit: 1761

lines 31-40, Figure 10). Therefore, once it was known to include an area of weakness in combination with a reclosable bag, to select any particular type of weakness such as perforations or scoring, would have been an obvious design choice since Hayashi et al. teach either perforations or scoring are possible and one would have been substituting one conventional area of weakness for another for the same purpose.

19. Regarding claims 131, 138, and 141, modified Belmont et al. are silent in teaching a line of weakness that comprises a hermetic seal or that the panels of the bag are notched. Hayashi et al. teach it is well known in food package art (including pouches) to include tearing incisions, on the *outer* surfaces of films to a film-based package, and Hayashi et al. teach a particular method to form tear notches in combination with a line of weakness on the outer layer only (i.e. which would maintain the desired hermetic seal of Belmont et al. ) so that the package can be easily torn (Column 1, line 15 to Column 2, line 8, as illustrated in Figures 5a, 11, 12). Additionally the line of weakness formed by microperforations (i.e. the middle part Q's size range of 20-200 microns) in (Column 13, line 56 to Column 14, line 28 and Figure 11). Therefore, it would have been obvious to further modify Belmont et al. such that the line of weakness is hermetically sealed and that the line of weakness comprises microperforations and notched ends, since Hayashi et al. teach it is conventional to provide lines of weakness on the outer layer only of a multilayer film (i.e. preserving the hermetic seal of Belmont et al.) and providing microperforation in combination with notches will allow one to easily tear and remove a portion of a multilayer food pouch.



Art Unit: 1761

20. Claim 133 is rejected under 35 U.S.C. 103(a) as being unpatentable over Belmont et al. (US 6327754 B1) in view of Stolmeier et al. (US 6257763B1) as applied to claims 1,2,6-9,14,18,19,75,79,82-86,104,107-112,122-130,132,134-138,142-147 further in view of May (US 5725312).

21. Belmont et al. teach an hermetically sealed bag, but are silent in teaching the fastener tracks are peelably and hermetically sealed. May also teaches food bags made from two panels with a reclosable fastener, and further teaches the panels comprise a multilaminate film with a tear path and a peelable seal between the two tracks(e.g. in Figures 3,4,7,8,11, and 12, Column 15, lines 25-60). The peelable seal between the reclosable fastener tracks, is to provide hermetically seal the bag that is easily broken by the consumer(Figures 19-21, Column 22, lines 15-59, Column 23, lines 30-47, Column 1, lines 35-56 and Column 3, lines 10-15). Therefore, it would have been obvious to include formed a peelable seal between the fastener tracks, May teaches the peelable seal in combination with the fastener structure for the purpose of providing an hermetically seal food in the bag , as desired by Belmont et al. that can still be easily broken by the consumer , and this would assure hermetically sealed food even in the event that the tamper evident fold section is removed.

22. Claim 140 is rejected under 35 U.S.C. 103(a) as being unpatentable over Belmont et al. (US 6327754 B1) in view of Stolmeier et al. (US 6257763B1) as applied to claims 1,2,6-9,14,18,19,75,79,82-86,104,107-112,122-130,132,134-138,142-147 further in view of Boeckmann et al.

Art Unit: 1761

23. Modified Belmont et al. are silent in teaching a tear tape adjacent to at least one of areas of structural weakness. Boeckmann et al. teach food bags with reclosable fasteners with a tamper evident area of perforation lines. In order to maintain a hermetically sealed environment, Boeckmann et al. provide a tear tape adjacent the perforation lines (Column 1, line 5 to Column 2 line 17, Column 3, lines 23-48).

Therefore, it would have been obvious to further modify Belmont et al. and include a tear tape adjacent the lines of perforation since Belmont et al. teach a hermetically seal bag and Boeckmann et al. teach tear tapes placed adjacent to the perforation lines of a reclosable food bag will seal the perforation lines and maintain a hermetically sealed environment.

#### ***Response to Arguments***

24. Applicant's arguments with respect to the rejection(s) of all of the claims made under 35 U.S.C. 102(b) as being clearly anticipated by Branson (US 4927271), under 35 U.S.C. 102(e) as being clearly anticipated by Thieman et al. (WO 98/45180), and under 35 U.S.C. 103(a) as being unpatentable over Thieman et al. (WO 98/45180) have been fully considered and are persuasive. Similarly, Applicant's arguments with respect to the rejection of claims 75,79,82-86, 144,145 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Herber et al. (US 5525363) have been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as set forth above.

25. Applicant's arguments with respect to Herber et al and the rejection of claims 1,2,6-9, 14,18,19, 110,122 under 35 U.S.C. 102(b) as being clearly anticipated by

Art Unit: 1761

Herber et al. (US 5525363). have been fully considered but they are not persuasive. It is noted that the reclosable fastener *structure* recited in claims 1 and 2, is not limited to the fastener tacks(i.e. the reclosable fastener structure comprises the entire fasteners and an integral skirt), and thus the flange items 214 and 216 of Herber et al. are considered to extend past the line of perforations.

### **Conclusion**

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 8:00AM-4:30PM M-F.

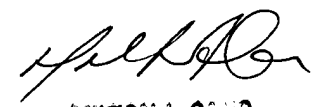
27. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

28. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen  
Examiner  
Art Unit 1761



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